UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAVID WILSON, Plaintiff, vs. CITY OF HAZELWOOD, MISSOURI OFFICER TODD GREEVES, Defendants.	))))))))))	Case No.: 4:06-CV-01292MLM

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR FOR NEW TRIAL

On February 13, 2008, the jury returned its verdicts in this matter. On plaintiff's claims for damages for civil rights violations, false arrest and battery, the jury found in favor of plaintiff and awarded plaintiff damages in the sum of $7500. On plaintiff's claim for punitive damages against defendant, the jury awarded the sum of $10,000. Defendant Todd Greeves now moves the court enter judgment in his favor notwithstanding the verdict, or alternatively, to grant defendant a new trial.

Plaintiff's claims against defendant arise as the result of his arrest on May 12, 2003 in Hazelwood MO. Hazelwood Police Officer Todd Greeves was on duty when a report was made of a traffic accident with injuries on Interstate 270. Both plaintiff Wilson and defendant Greeves went to assist on the call. After arriving at the scene of the accident, Officer Greeves ordered plaintiff to move the fire truck which plaintiff had ordered parked in a traffic lane of the highway. Defendant Greeves testified that he believed the placement of the truck constituted a hazard to traffic and that the work of the Robertson Fire Protection District responders could be undertaken in a reasonably safe manner if the truck was moved one lane to the right. Captain David Wilson refused to move the fire truck or have the truck moved, and Officer Greeves arrested plaintiff for plaintiff's refusal to obey his order to move the fire truck.

At the time of this arrest, defendant Todd Greeves was on duty as a Hazelwood police officer. He testified at trial that he believed he had authority under the Revised Statues of Missouri and the Ordinances of the City of Hazelwood to order the truck to be moved by plaintiff, and to arrest plaintiff for his failure to obey this order. The Court took judicial notice of the Revised Missouri Statutes concerning the authority of the police to enforce traffic regulations, specifically, RSMo. Section 300.020 (2007), including the enforcement of parking regulations, RSMo Section 300.440 (2007). Defendant's testimony that he believed he had this authority was not disputed, nor was there any other evidence that the reason for plaintiff's arrest had any other motivation or purpose. The parties do disagree whether defendant Greeves actually had this authority.

The plaintiff contended at trial that he was operating an emergency vehicle at the time of this incident and was authorized under RSMo. Section 304.022, et seq. (2007) to park the truck in the highway without regard to the defendant's orders to move it. The plaintiff testified that he believed the fire truck needed to be parked at that location for purposes of safety, and that the defendant had no legal authority to order it moved or to arrest plaintiff for his refusal to move the parked fire truck.

This case presents an unusual and unique question: does a police officer have the authority under Missouri law to lawfully arrest a fire official for the fire officials refusal to obey an order the fire official believed was unlawful, but which the police officer believed was lawful? In denying defendant Greeves' motion for summary judgment on the grounds of qualified immunity, the Court concluded that defendant Greeves did not have probable cause to arrest plaintiff, and lacked legal authority to arrest plaintiff. At trial, Greeves testified he believed he had reasonable grounds to arrest plaintiff, and any lawful authority plaintiff had to leave the truck where it was parked was lost once defendant ordered plaintiff to move the truck.

The defendant asserts that he is entitled to judgment as a matter of law because the evidence established that he did not know his actions violated plaintiff's constitutional rights, and further that it was not possible that a reasonable officer would have this knowledge. Under the authority of *Kuehl v. Burtis,* 173 F. 3rd 646 (8th Cir. 1999) defendant Greeves is entitled to qualified immunity if defendant Greeves had the objectively reasonable belief that he had legal authority to arrest plaintiff, even if his belief was mistaken. While the parties disagree whether Greeves arrest of plaintiff was authorized under law, there is no dispute as to Greeves' testimony that he believed he had this authority.

It is defendant's position that there was no evidence of malice to justify the submission of punitive damages to the jury. The parties agreed that the arrest was of short duration, at most 20 minutes. The police car camera video of the arrest indicates that a minimum of force was used to effect the arrest. The parties agree that there was no profanity or derogatory language used towards the plaintiff by defendant, and there is no evidence that the arrest was motivated by any personal animus or spite that existed prior to the arrest. In fact, the parties scarcely knew one another before May 12, 2003, despite having worked for overlapping public safety jurisdictions in the same municipality for over a decade. Given all these circumstances, there was no basis for the submission of the claim for punitive damages to the jury, and it was prejudicial error to do so.

In addition, the trial court erred when it permitted plaintiff's attorney to examine defendant Greeves as to certain citizen complaints and other incidents of alleged misconduct during the punitive phase of the trial. These complaints were remote in time, of dissimilar character, unfounded by competent evidence, were not sustained and were not the subject of any disciplinary action against the defendant officer. The presentation of this evidence prejudiced defendant and permitted to jury to award punitive damages against the defendant on evidence that was based on hearsay, was insufficient as a matter of law and from which defendant could not properly or adequately defend himself.

WHEREFORE, defendant Todd Greeves moves the Court grant his motion and enter judgment notwithstanding the verdict in his favor, or grant him a new trial, and for such other and further relief as the Court deems proper.

/s/Peter J. Dunne

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I hereby certify that a copy of the foregoing was filed with the Court's electronic filing system this 27th day of February, 2008 to the following: **Stephen M. Ryals**, Attorney for Plaintiff, 3120 Locust St., St. Louis, Missouri 63103 and **W. Bevis Schock**, Co-Counsel for Plaintiff, 7777 Bonhomme Avenue, Suite 2300, St. Louis, Missouri 63105.

/s/Peter J. Dunne